

# Public Notice

**US Army Corps  
of Engineers**  
Louisville District ®

Public Notice No.  
LRL-2016-00148

Open Date:  
13 Dec 2017

Close Date:  
12 Jan 2018

Please address all comments and inquiries to:  
U.S. Army Corps of Engineers, Louisville District  
ATTN: Mr. Todd Williams, CELRL-RDE  
845 Sassafra Creek Road  
Sassafra, Kentucky 41759-8806

[lr.regulatorypubliccomment@usace.army.mil](mailto:lr.regulatorypubliccomment@usace.army.mil)

Phone: 606-642-3446

This notice announces an application submitted for a Department of the Army (DA) permit, subject to Section 404 of the Clean Water Act.

**APPLICANT:** Rush Properties LLC  
PO Box 203  
Rush, Kentucky 41168

**LOCATION:** On Lockwood Creek, a perennial stream, and on unnamed intermittent and ephemeral streams that are tributary to Lockwood Creek, Big Sandy River Watershed, Boyd County, Kentucky.

Latitude: 38.309015°N  
Longitude: -82.604230°W

**PURPOSE:** To construct a recreational pond.

**DESCRIPTION OF WORK:** The applicant requests after-the-fact authorization for the construction of an approximately 8.5 acre recreational pond. The construction of the recreational pond required the discharge of fill material into 481 linear feet of perennial stream. The construction also resulted in impacts to, and inundation of, 2,843 linear feet of perennial, 213 linear feet of intermittent, and 633 linear feet of ephemeral streams. Lockwood Creek is a tributary of the Big Sandy River.

**AVOIDANCE, MINIMIZATION, and MITIGATION MEASURES:** Because this is an after-the-fact permit, the applicant's options for avoidance and minimization are limited by the existing conditions. Avoidance of on-site waters is not possible because the pond is already constructed and the stream impacts have already occurred. Minimization measures included limiting the stream disturbance/fill to the footprint of the dam. The applicant is proposing to mitigate for the discharge of fill material, as well as the loss of stream associated with inundation, as described below.

**MITIGATION:** The applicant is proposing to mitigate the impacts by undertaking permittee-responsible mitigation, including the restoration and enhancement of 2,310 linear feet of a perennial unnamed tributary of Durbin Creek. Durban Creek is a tributary to the Big Sandy River. The proposed mitigation site is located in an adjacent sub-watershed approximately 0.8 miles from the impacts to Lockwood Creek. The mitigation would be undertaken using natural stream design techniques to restore stream functions which were lost or reduced as a result of historic agricultural and residential impacts. The site would be permanently protected by a deed restriction. It is noted that this proposed mitigation plan is open to comment and subject to change. The Corps will make a determination of appropriate mitigation, upon review of all submitted information.

**REVIEW PROCEDURES:** A DA Permit cannot be issued if any legally required Federal, State, or local authorization or certification is denied. A DA permit, if otherwise warranted, will not be issued until a Commonwealth of Kentucky Water Quality Certification or waiver is on file at this office. In order to comply with Section 401 of the Clean Water Act, the applicant, by this notice, hereby applies for State certification from the KDMP.

Copies of this notice are sent to the appropriate Federal and State Fish and Wildlife Agencies. Their views and comments are solicited in accordance with the Fish and Wildlife Coordination Act of 1956.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. A request for a public hearing must state the specific interest which might be damaged by issuance of the DA Permit.

The National Register of Historic Places has been examined, and it has been determined that there are no properties currently listed on the Register which would be directly affected by the proposed work. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archaeological, scientific, pre-historical, or historical sites or structures which might be affected by the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetic values, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and in general, the needs and welfare of the public. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines (40 CFR Part 230) promulgated by the Administrator, United States Environmental Protection Agency, under authority of Section 404(b) of the CWA.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Written statements received in this office on or before the closing date will become a part of the official record and will be considered in the determination on this permit request. Any objections which are received during this period will be forwarded to the applicant for possible resolution before the determination is made whether to issue or deny the requested DA Permit. A permit will be granted unless its issuance is found to be contrary to the public interest. Information pertaining to this application is available for public examination during normal business hours upon prior request. Drawings are available on Louisville District's Internet site at <http://www.lrl.usace.army.mil/Missions/Regulatory.aspx>. All comments regarding this proposal should be addressed to Mr. Todd Williams, CELRL-RDE at the address noted above and should refer to the Public Notice Number LRL-2016-00148.

If you desire to submit your comments by email, you must comply with the following:

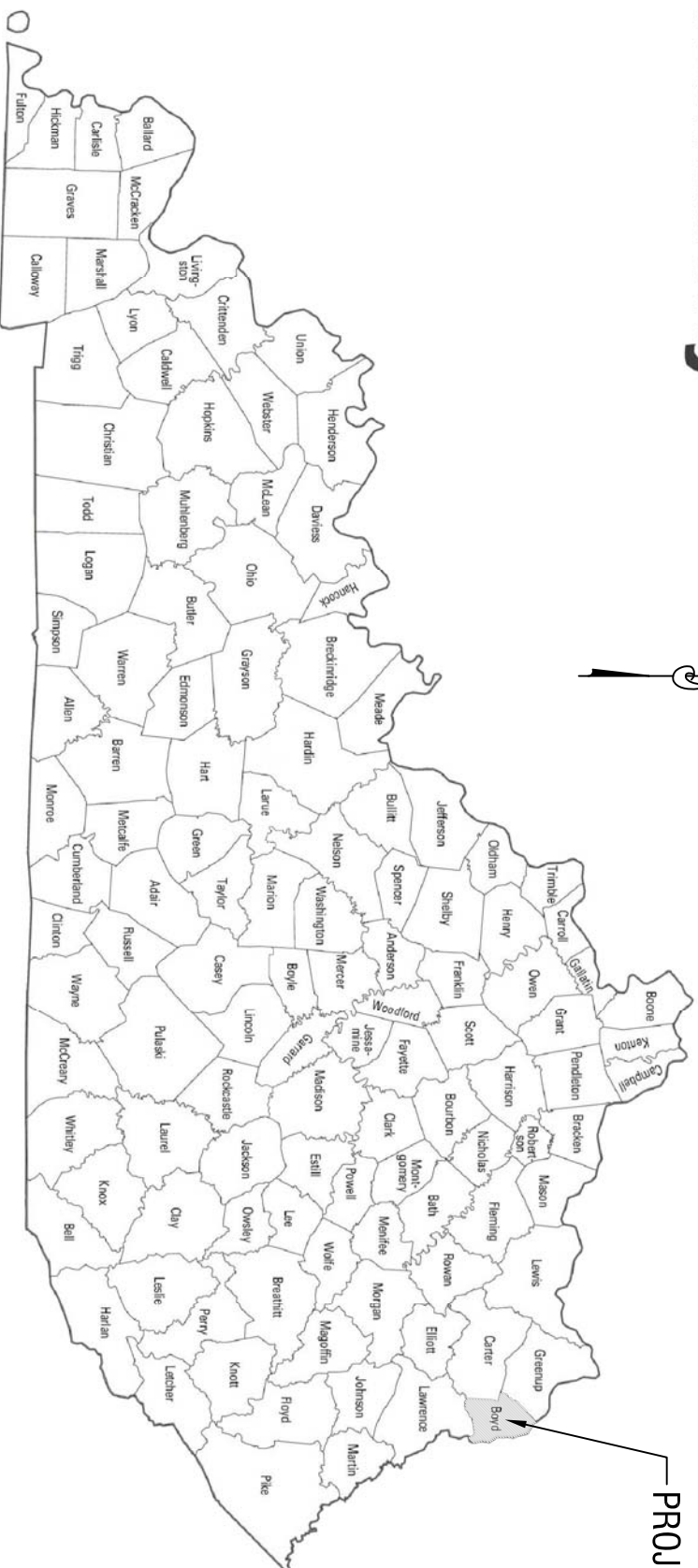
- a) In the subject line of your email, type in **ONLY** the Public Notice ID No. LRL-2016-00148.

Example:

Subject: LRL-2016-00148

- b) Provide your physical mailing address and telephone number.
- c) Send your email to: [lrl.regulatorypubliccomment@usace.army.mil](mailto:lrl.regulatorypubliccomment@usace.army.mil).
- d) If you are sending attachments greater than 1 Mb in size with your email, you must send a hard copy (CD or paper) to the Corps' physical address as well.

# Kentucky

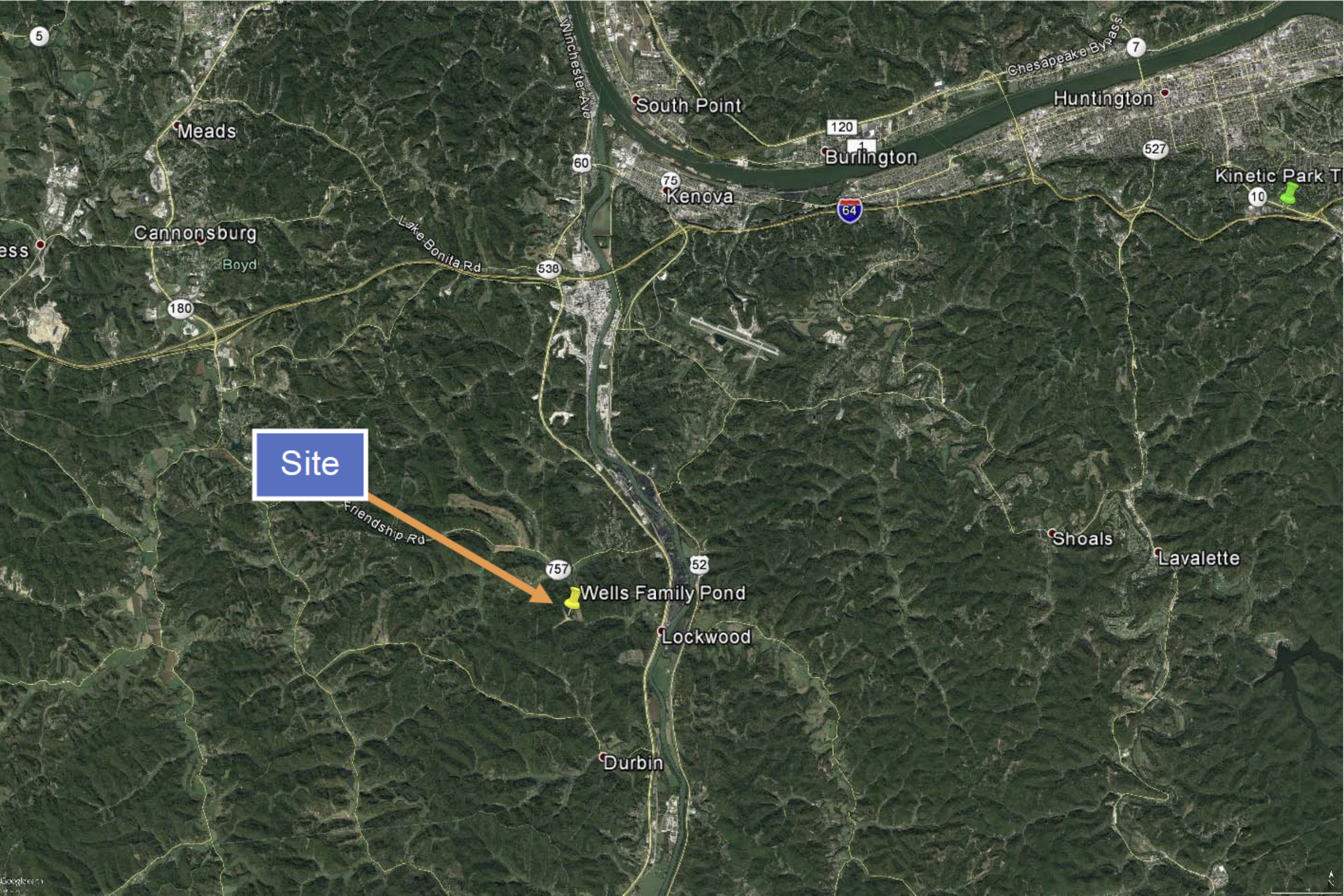


PROJECT SITE

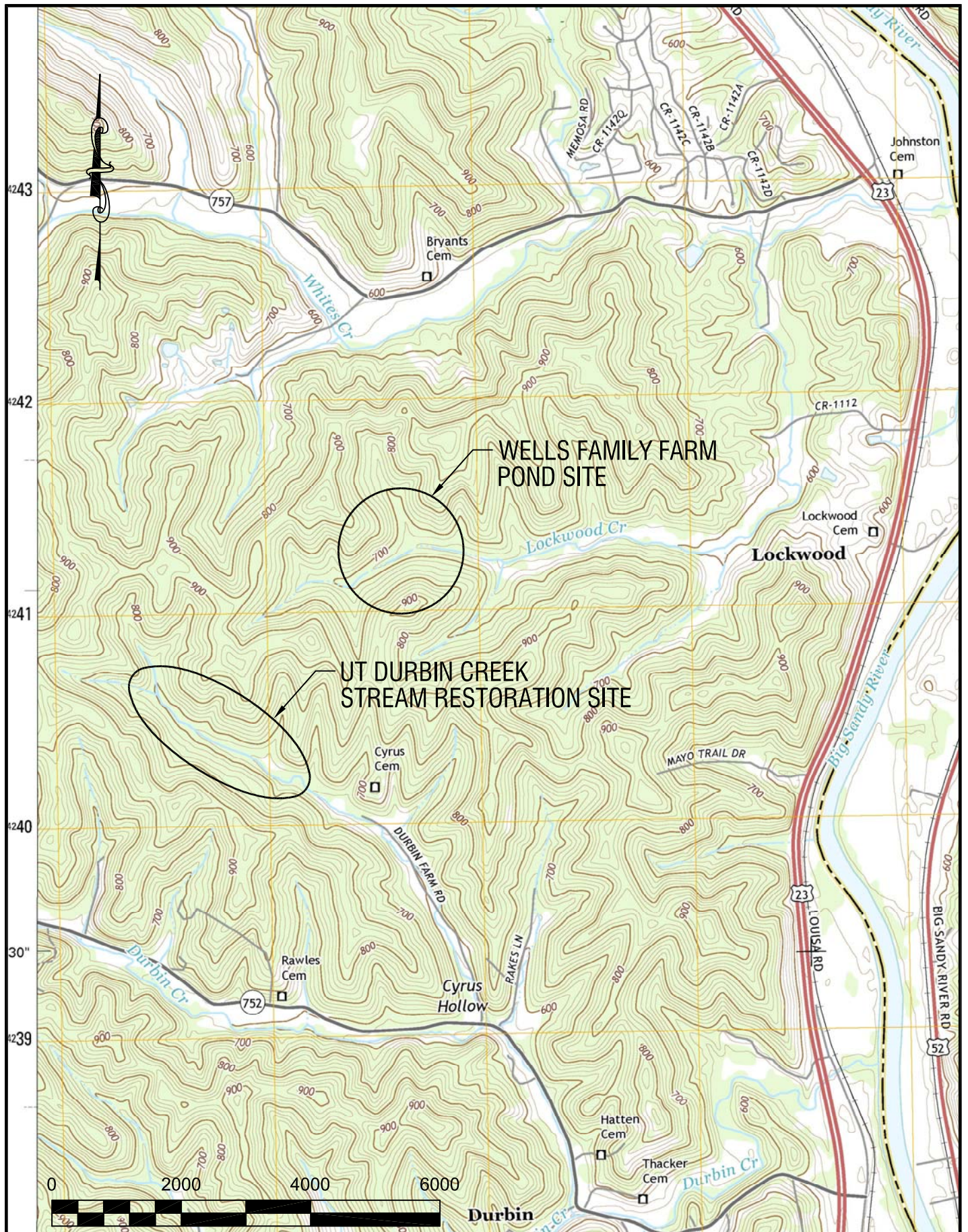
LRL-2016-148 - Project Location Map



Figure 1 – Location Map

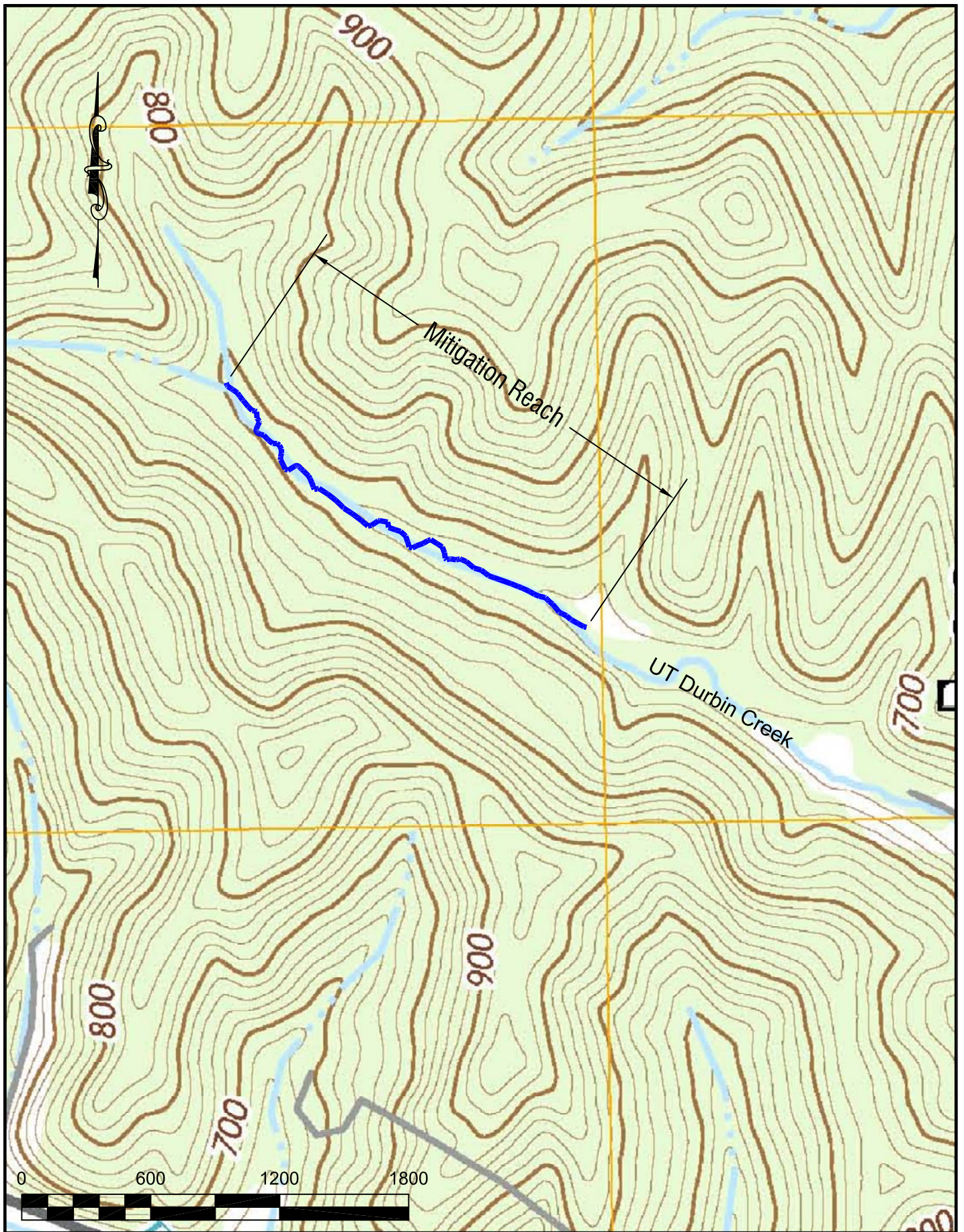






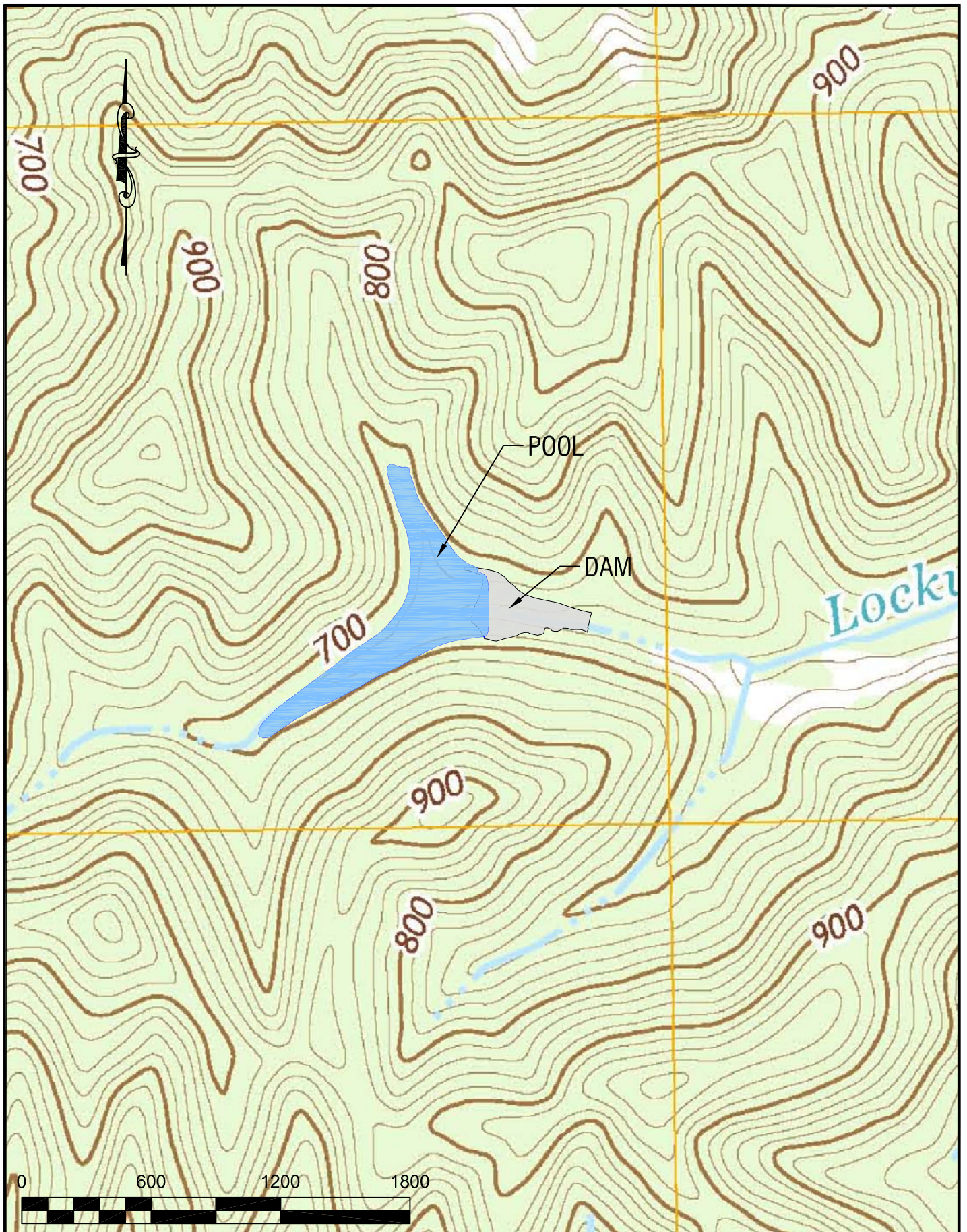
LRL-2016-148 - Project Location Map





Mitigation Site - Location Map





Wells Family Farm Pond Site - Location Map